93-460

Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1993

SAMMY BAUGHMAN, a.k.a.
SAMMY BOUGHMAN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the South Carolina Supreme Court err in failing to recognize that Petitioner's due process rights were violated by the State of South Carolina's violation of a 1989 plea agreement through charging Petitioner with offenses which should have been dismissed under the 1989 plea agreement and to which he pleaded guilty?

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OPINIONS BELOW

The Court of Common Pleas of the Ninth Judicial Circuit of South Carolina, Hon. A. Victor Rawl presiding, issued a writ of habeas corpus on October 22, 1991. The South Carolina Supreme Court reversed the order of the trial court in an opinion filed on May 3, 1993, which is set forth in the Appendix at A-1.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a). The final disposition of this case below was the South Carolina Supreme Court's decision reversing the issuance of the writ of habeas corpus, filed on May 3, 1993.

CONSTITUTIONAL PROVISIONS INVOLVED

The fourteenth amendment to the United States Constitution states in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]

STATEMENT OF THE CASE

Proceedings Below

Petitioner brought a petition for writ of habeas corpus in the Court of Common Pleas of the Ninth Judicial Circuit of South Carolina, Hon. A. Victor Rawl presiding, on September 27, 1991. In the petition, Petitioner alleged that he was unlawfully imprisoned in violation of his right against double jeopardy under the Constitutions of the United State and South Carolina. Specifically, Petitioner argued that the sentence he was serving after a plea of guilty to co-

caine offenses in 1990 was illegally obtained because the cocaine offenses had been among the charges pending against him that were dismissed in exchange for a plea of guilty to marijuana offenses in 1989.

After an evidentiary hearing, the court correctly analyzed the issue raised by the petition under the due process clause and concluded that in 1990 Petitioner had been charged and asked to plead guilty to cocaine offenses, which were dismissed pursuant to a 1989 plea agreement for a marijuana offense. Accordingly, the court ordered the 1990 charges dismissed and the Petitioner released.

On appeal, the South Carolina Supreme Court reversed the decision of the lower court and held that, as a matter of contract law, the cocaine offenses

were not "charges pending" against the Petitioner within the meaning of the 1989 plea agreement. Although Petitioner raised the issue of due process fairness on appeal, the South Carolina Supreme Court did not address Petitioner's due process concerns, but merely treated the construction of the 1989 plea agreement as an issue of contract.

Statement of Facts

In June 1989, Petitioner was arrested by police officers from Moncks Corner, South Carolina, for various marijuana offenses. Pursuant to a plea agreement dated October 12, 1989, he pleaded guilty to possession of marijuana and possession of drug paraphernalia in the Municipal Court of Moncks Corner, Hon. Jack A. Landis presiding. The plea agreement states in its entirety:

> UPON CONSIDERATION of the plea of guilty by Sammy Baughman to possession of marijuana and to possession of drug paraphernalia in the Municipal Court of Moncks Corner, all other charges pending against Mr. Baughman will be dropped, not limited to those listed in the following Uniform Warrant Numbers: Warrant Number C178302, Distribution of a Schedule I Drug, Marijuana which was remanded as Simple Possession of Marijuana on 8-16-89; Warrant Number C178303, Possession of a Schedule II Drug, (P.C.P.) which was dismissed or Nolle Prosequi by the Solicitor's Office.
>
> The undersigned law enforcement personnel agree to the above. Such a plea is in the best interest of justice and equitable distribution of this matter.

(Emphasis added.) The agreement was signed by Assistant Solicitor for the Ninth Judicial Circuit, Steve Davis, and a member of the Moncks Corner Police Department, Police Officer Wendell Bowen.

In January 1990, an arrest warrant for alleged cocaine offenses committed by

Petitioner was issued. The warrant was executed by Officer Bowen in June 1990, and Petitioner was indicted for cocaine offenses in August 1990. The offenses for which Petitioner was indicted allegedly occurred in July 1989, following Petitioner's arrest on the marijuana offenses and prior to execution of the plea agreement on the marijuana offenses.

It was established at the evidentiary hearing that at the time of his arrest, Petitioner protested to Officer Bowen that he believed the cocaine offenses had been dismissed as a result of his 1989 plea agreement. It is uncontroverted that Officer Bowen advised Petitioner that the cocaine offenses were not included in the charges dismissed in exchange for Petitioner's plea of guilty. Petitioner testified that as a consequence of Officer Bowen's remarks he did

not advise his counsel of the prior plea agreement or of his belief that the cocaine charges should have been dismissed under the agreement.

On November 26, 1990, Petitioner pleaded guilty to one count of distribution of cocaine before the Court of General Sessions of Berkeley County, Hon. Luke N. Brown presiding. Judge Brown sentenced him to 15 years in prison and a $25,000 fine.

Notwithstanding Officer Bowen's insistence to Petitioner that the cocaine offenses were not contemplated by the "charges pending" language of the 1989 plea agreement, Officer Bowen testified at the evidentiary hearing on Petitioner's petition for writ of habeas corpus that at the time of the 1989 plea agreement he knew of the alleged cocaine offenses and the investigation of Petition-

er by the Governor's Raid Team. In fact, although Officer Bowen was not a member of the Governor's Raid Team, it is undisputed that he worked closely with the team and participated in the investigation of Petitioner for the alleged distribution of cocaine. Officer Bowen testified that he shared a confidential informant with the team, the identity of whom he sought to protect by entering into the 1989 plea agreement with Petitioner. Despite his knowledge of the cocaine offenses, Officer Bowen testified that he did not discuss the offenses with Petitioner or his attorney prior to acceptance of the 1989 plea agreement because it was his view that the cocaine offenses were not covered by the 1989 agreement.

On the other hand, Petitioner's counsel, who drafted the plea agreement,

testified that it was his intent that the plea agreement cover any alleged offenses which occurred during the time of the investigation of Petitioner.

ARGUMENT

THE SOUTH CAROLINA SUPREME COURT ERRED IN FAILING TO RECOGNIZE THAT PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE STATE OF SOUTH CAROLINA'S VIOLATION OF A 1989 PLEA AGREEMENT THROUGH CHARGING PETITIONER WITH OFFENSES WHICH SHOULD HAVE BEEN DISMISSED UNDER THE 1989 PLEA AGREEMENT AND TO WHICH HE PLEADED GUILTY.

Over 20 years ago, this Court recognized that "when a plea rests on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Santobello v. New York, 404 U.S. 257, 262 (1971). A breach of a plea agreement entitles a defendant to an appropriate remedy. Id. at 262.

While contract principles are helpful in assessing the rights of a defendant under a plea agreement, due process notions of fairness ultimately define those rights, and a court must not "rigidly apply commercial contract law to all disputes concerning plea agreements." United States v. Garcia, 956 F.2d 41, 44 (4th Cir. 1992) (notwithstanding parol evidence rule, court could consider government's letter accompanying plea agreement in construing promises made as inducement to plea). In the leading Fourth Circuit case on construction of plea agreements, the court set forth the approach that must be taken in construing a plea agreement:

> In the process of determining whether disputed plea agreements have been formed or performed, courts have necessarily drawn on the most relevant body of developed rules and principles of private law, those pertaining to the forma-

tion and interpretation of commercial contracts. . . . But the courts have recognized that those rules have to be applied to plea agreements with two things in mind which may require their tempering in particular cases. First, the defendant's underlying "contract" right is constitutionally based and therefore reflects concerns that differ fundamentally from and run wider than those of commercial contract law. . . . Second, with respect to federal prosecutions, the courts' concerns run even wider than protection of the defendant's individual constitutional rights --to concerns for the "honor of the government, public confidence in fair administration of justice, and the effective administration of justice in a federal scheme of government." . . .

That the resulting interpretive doctrine is an amalgam of constitutional, supervisory, and private law concerns does not mean, however, that it is without form. Some ordering principles and guidelines have clearly emerged. Those relevant to this appeal bear emphasis here.

Private law interpretive principles may be wholly dispositive in an appropriate case. For example, whether a

written agreement is ambiguous or unambiguous on its face should ordinarily be decided by the courts as a matter of law. If it is unambiguous as a matter of law, and there is no suggestion of government over-reaching of any kind, the agreement should be interpreted and enforced accordingly. Neither side should be able, any more than would be private contracting parties, unilaterally to renege or seek modification simply because of uninduced mistake or change of mind. Such an approach is conformable not only to the policies reflected in private contract law from which it is directly borrowed, but also to constitutional concerns of fundamental fairness in "bargaining" for guilty pleas, . . . and to the wider concerns expressed in the exercise of supervisory jurisdiction over the administration of federal criminal justice. . . .

On the other hand, both constitutional and supervisory concerns require holding the Government to a greater degree of responsibility than the defendant (or possibly than would be either of the parties to commercial contracts) for imprecisions or ambiguities in plea agreements. . . . This is particularly appropriate where, as will usually be the case,

> the Government has proffered the terms or prepared a written agreement--for the same reasons that dictate that approach in interpreting private contracts. . . .
>
> As a necessary corollary, derelictions on the part of defense counsel that contribute to ambiguities and imprecisions in plea agreements may not be allowed to relieve the Government of its primary responsibility for insuring precision in the agreement. While private contracting parties would ordinarily be equally chargeable--so far as enforceability and interpretation are concerned--with their respective counsels' derelictions in negotiating commercial contracts, different concerns apply to bargained plea agreements. Unlike the private contract situation, the validity of a bargained guilty plea depends finally upon the voluntariness and intelligence with which the defendant--and not his counsel--enters the bargained plea.

United States v. Harvey, 791 F.2d 294, 300-01 (4th Cir. 1986) (emphasis added; citations omitted).

In this case, the South Carolina Supreme Court ignored the due process interests implicated in the construction of a plea agreement and instead rigidly applied contract law. In so doing, the South Carolina court relied on its earlier decision in State v. Gates, 299 S.C. 92, 382 S.E.2d 886 (1989), wherein it noted: "Where language in an instrument is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument." 382 S.E.2d at 887. However, in State v. Gates, supra, in which the issue was whether the defendant and not the prosecution violated the terms of a plea agreement, the South Carolina Supreme Court explicitly noted that it could apply contract law because of the unique posture of the case, i.e., "this Court is not faced with the type of constitutional

claims presented in Santobello v. New York, [supra] (where guilty plea is induced by prosecutorial promises, those promises must be fulfilled)." 382 S.E.2d at 887.

Where, as here, there was a clear question of governmental overreaching on the part of Officer Bowen, see United States v. Harvey, supra, 791 F.2d at 300, and breach of promise, see United States v. Ringling, 988 F.2d 504 (4th Cir. 1993) (failure to debrief defendant prior to sentencing was breach of promise to make full nature and extent of defendant's cooperation known to the court at sentencing), the South Carolina Supreme Court was compelled to apply constitutional principles in construing the plea agreement.

It is Petitioner's position that the term "charges pending" unambiguously re-

fers to all criminal offenses which were brought or were known to the State at the time of the 1989 plea agreement. Cf. United States v. Hawes, 774 F. Supp. 965, 970 (E.D.N.C. 1991) (government's promise not to prosecute defendant for "any transactions involved in this investigation" could not be limited to transactions about which government had knowledge at time of plea). However, even if there were an ambiguity, it must be decided in favor of Petitioner. United States v. Harvey, supra, 791 F.2d at 300. The South Carolina Supreme Court's reliance on People v. Waterman, 140 Mich. App. 652, 364 N.W.2d 780 (1985); State ex rel. Woods v. Ratliff, 322 S.W.2d 864 (Mo. 1959) (en banc); and State v. Myal, 104 N.H. 188, 182 A.2d 605 (1962), each of which involved a matter of statutory construction, was pointless in determin-

ing Petitioner's rights under this particular plea agreement.

Viewed in the light most favorable to the State, this case presents a case in which the prosecution knows that certain charges not specifically mentioned in a plea agreement could be brought against Petitioner and the prosecution purposely conceals that knowledge from Petitioner and his attorney on the chance that the State can obtain some advantage from that concealment. The fact that Officer Bowen and not the Solicitor engaged in the concealment does not relieve the State of its duty to deal fairly with Petitioner. "There can be no distinction between promises made by prosecutors and the Attorney General's Office and promises made by the agents of the Drug Enforcement Administration." United States

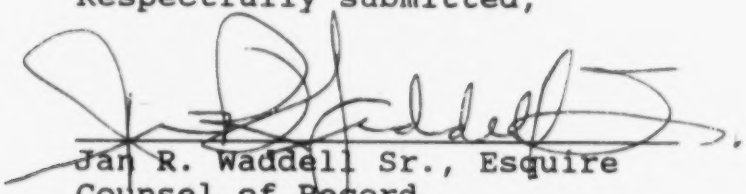
v. Barrett, 390 F. Supp. 1022, 1024 (D.S.C. 1975).

In treating the assessment of Petitioner's rights under the plea agreement as purely a matter of contract law, the South Carolina Supreme Court has signaled the law enforcement community that deceit will be rewarded in the plea bargaining process. The State gave up nothing in its "bargain" with Petitioner. The State obtained the benefit of protecting the identity of its confidential informant as well as extracting a lengthy sentence from Petitioner. This is a result which cannot be countenanced by this Court.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



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APPENDIX

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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Sammy Baughman, a.k.a.,
Sammy Boughman, Respondent,

v.

State of South Carolina, Appellant.

Appeal from Berkeley County
A. Victor Rawl, Judge

Opinion No. 23846
Heard March 23, 1993--Filed May 3, 1993

REVERSED

Attorney General T. Travis Medlock, Chief Deputy Attorney General James Patrick Hudson, Assistant Attorneys General Delbert H. Singleton, Jr. and Lisa C. Jefferson, all of Columbia, for Appellant.

Shiela L. Thomas, of Summerville; and Francis M. Kirk, of Goose Creek, both for Respondent.

PER CURIAM: The State appeals an Order granting Respondent, Sammy Baughman (Baughman), habeas corpus.

We reverse.

FACTS

On June 10, 1989, Baughman was arrested by Moncks Corner Police Officers. He was charged with distribution of marijuana, possession of PCP and possession of drug paraphernalia. Pursuant to a plea agreement dated October 12, 1989, he pled guilty in Municipal Court to simple possession of marijuana and possession of drug paraphernalia. The plea agreement reads:

> Upon consideration of the plea of guilty by Sammy Baughman to possession of marijuana and to possession of drug paraphernalia in the Municipal Court of Moncks Corner, all other charges pending against Mr. Baughman will be dropped, not limited to those listed in the following Uniform Warrant Numbers: Warrant Number C178302, Distribution of a Schedule I Drug, Marijuana which was remanded as Simple Possession of Marijuana on 8-16-89; which Warrant Number C178303, Possession of a Schedule II Drug, (P.C.P.) which was dismissed

> or Nolle Prosequi by the Solicitor's Office. (Emphasis supplied.)

Unbeknownst to Baughman at the time of his plea, he was the subject of an investigation by the Governor's Raid Team, during June and July, 1989, for distribution of cocaine. As a result of that investigation, he was indicted, in September, 1990, for three counts of distribution of cocaine which had occurred between July 20-27, 1989. Baughman pled guilty to one count of distribution of cocaine, in exchange for which the other two counts were nolle prossed. He was sentenced to fifteen years imprisonment and a $25,000 fine.

In September, 1991, Baughman instituted habeas corpus proceedings, alleging that the cocaine offenses to which he pled guilty in 1990, were "charges

pending" at the time of his 1989 plea to possession of marijuana, such that they were covered by the 1989 plea agreement. Circuit Court agreed and granted the request for relief.

ISSUE

> The sole issue we address is whether the cocaine charges to which Baughman pled guilty in 1990 were contemplated by the 1989 plea agreement.

DISCUSSION

As noted previously, the 1989 plea agreement allowed Baughman to plead guilty to simple possession of marijuana in exchange for which "all other charges pending . . . will be dropped, not limited to those listed in the following Uniform Warrant Numbers . . . ." (Emphasis supplied). State asserts that

Baughman was properly indicted in 1990, in that no cocaine charges were "pending" at the time of the 1989 plea. We agree.

"Where language in an instrument is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument." State v. Gates, 299 S.C. 92, 95, 382 S.E.2d 886, 888 (1989). In interpreting plea agreements, it is error for a court "to imply as a matter of law a term which the parties themselves did not agree upon." United States v. Benchimol, 471 U.S. 453, 456, 105 S.Ct. 2103, ___, 85 L.Ed.2d 462, 467 (1985).

By definition, a "charge" is an "accusation of a crime by a formal complaint, information or indictment." Black's Law Dictionary 211 (5th ed.

1979). This Court has not previously addressed at what point in time a criminal charge is "pending." However, jurisdictions which have decided the issue hold that a charge is not pending until an information is filed, an indictment returned, or a warrant issued. People v. Waterman, 364 N.W.2d 780 (Mich.App. 1985); State v. Ratliff, 322 S.W.2d 864 (Mo. 1959); State v. Myal, 182 A.2d 605 (N.H. 1962).

Here, the arrest warrant for the cocaine offenses was issued on January 24, 1990; Baughman was arrested on June 14, 1990, and an indictment was handed down on August 21, 1990. In sum, the charges to which Baughman pled guilty in 1990 were not pending at the time of his 1989 plea.

The Order granting Baughman habeas corpus relief is reversed.

REVERSED.

David W. Harwell C.J.

A. Lee Chandler A.J.

Ernest A. Finney Jr. A.J.

Jean H. Toal A.J.

James E. Moore A.J.